

No. 15505

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In the United States Court of Appeals  
for the Ninth Circuit

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UNITED STATES OF AMERICA, APPELLANT

v.

FRANK L. SMITH, APPELLEE

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF OREGON

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REPLY BRIEF FOR THE UNITED STATES

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In his brief, appellee makes no effort to answer our fundamental contention in this case: that the judgment of the court below, entered upon a directed verdict for appellee, was in excess of the court's jurisdiction. In our main brief, we demonstrated that no court other than the Emergency Court of Appeals has jurisdiction to take any action which would adversely affect the validity of the RFC order invalidating the subsidy payments made to appellee, or which would prevent or impede the enforcement of the debt created by that order (Main Brief, pp. 8-11). We further demonstrated that the judgment of the court below had precisely this prohibited effect (*id.* at 11-13).

Appellee has addressed himself to neither of these contentions. Instead, the bulk of his argument is devoted to showing that as a matter of law RFC has as yet taken no final action upon his protest of the order of invalidation, and that until such action has been taken he has no right to appeal to the Emergency Court of Appeals (Brief for Appellee, pp. 7-11). We of course have conceded that such is the case (Main Brief, pp. 8, 12). Indeed, these circumstances form the basis for our request that this Court reverse the judgment to the court below and order the entry of judgment for the United States, with a direction "to stay execution of this judgment, *pending such reconsideration as the General Services Administration, successor to RFC in this matter, may deem it necessary to give to appellee's protest before making a final and effective disposition thereof*; and pending such efforts to seek review in the Emergency Court of Appeals as may prove necessary or as appellee may deem advisable" (Main Brief, p. 18; emphasis added).

Appellee argues that the district court could not follow this course, and seeks to document his contention by attempting to distinguish the facts of this case from those in two cases relied upon in our main brief, *Silver Pine Oil Company v. Reconstruction Finance Corporation*, 205 F. 2d 835 (Em. Ct. App.), and *Reconstruction Finance Corporation v. Service Pipe Line Co.*, 198 F. 2d 775 (C. A. 10) (Brief for Appellee, pp. 11-13). Appellee points out that in those cases, unlike this one, the defendants had never protested the orders upon which suit was brought. Therefore, he says, in those cases "it was proper for

the District Court to enter judgment in favor of the RFC \* \* \*. There was nothing more for the administrative agency to do, therefore the court could enter judgments based on the final RFC orders” (Brief for Appellee, p. 12).

This attempted distinction is without substance, for in both the *Silver Pine* and *Service Pipe Line* cases there *was* something “more for the administrative agency to do” following the entry of judgments for the United States and the granting of stays of execution—despite the failure of the defendants to file protests prior to the judicial proceedings. As we pointed out in our main brief (pp. 14–16), the stays in those cases were granted by the district courts to permit the agency to receive and dispose of protests to be filed by the defendants. Consequently, the only distinction between those cases and this is that in the present case there is *less* for the agency to do, since the protest has already been received and considered. Unless the agency wishes to reconsider appellee’s protest on its merits, it need do no more than issue a second order of denial, reiterating the terms of the first such order which was of no effect due to apparent nondelivery. In these circumstances, we fail to see the logic of appellee’s argument that, whereas in *Silver Pine* and *Service Pipe Line* it was proper for the courts to enter judgment for the United States and then to stay execution pending the filing of a protest, administrative disposition of the protest, and a possible appeal to the Emergency Court, it would be improper to follow the same course here merely because the protest has already been filed but not finally disposed of.

## CONCLUSION

For the foregoing reasons, as well as for the reasons set forth in our main brief, we respectfully submit that the relief requested at page 18 of our main brief should be granted.

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